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Supreme Court, U.S.
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# In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1675.

MORRISON MOTOR FREIGHT, INC.,
*Petitioner,*

v.

HELEN GRETA FOX,
Administratrix of the Estate of Harry Eugene Fox,
*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO.

## BRIEF FOR RESPONDENT IN OPPOSITION.

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## BRIEF FOR RESPONDENT IN OPPOSITION.

Respondent, Helen Greta Fox, Administratrix, opposes Petitioner's Petition for Writ of Certiorari to the Supreme Court of Ohio.

## OPINIONS BELOW.

The opinions below are adequately set forth in the Petition.

## JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

## QUESTION PRESENTED.

The question presented by Petitioner is:

Whether in an action for wrongful death arising out of a traffic accident in Illinois an Ohio court may constitutionally award damages in excess of the $30,000 ceiling imposed by the Illinois statute.

The question as presented was answered by the Supreme Court of Ohio as follows:

> "In an action brought in Ohio under R.C. 2125.01, by the Ohio administrator of the estate of an Ohio resident who was killed in a motor vehicle collision in another state, where there was no citizen or resident of that state involved in the collision, and there is no issue of liability, Ohio has all the substantial governmental interests and the law of Ohio is determinative of the damages recoverable."

## STATUTES AND CONSTITUTION.

The statutes and constitution of the State of Illinois and the United States Constitution are adequately set forth in the Petition, *except* that the unquoted remainder of paragraph 2 of the Illinois Statute (Illinois Revised Statutes §§ 1 and 2) reads as follows (partially repeated for clarity):

> ". . . $25,000.00, where such death occurred on or after July 14, 1955 and prior to July 8, 1957, and where such death occurs on or after July 8, 1957 and prior to the effective date of this amendatory Act of 1967, *and without limitation where such death occurs on or after the effect date of this amendatory Act of 1967.*" (Emphasis ours.)

The Constitution of the State of Ohio and its statutes were not set forth by Petitioner and are herewith provided:

Ohio Constitution, Article I, Section 19(a).

§ 19a Damage for wrongful death.

"The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law. (Adopted September 3, 1912.)"

The Ohio Revised Code Section 2125.01 provides:

"When the death of a person is caused by wrongful act, neglect, or default which would have entitled the party injured to maintain an action and recover damages if death had not ensued, the corporation which or the person who would have been liable if death had not ensued, or the administrator or executor, shall be liable to an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances which make it murder in the first or second degree, or manslaughter. When the action is against such administrator or executor the damages recovered shall be a valid claim against the estate of such deceased person.

When death is caused by a wrongful act, neglect, or default in another state, territory, or foreign country, for which a right to maintain an action and recover damages is given by a statute of such other state, territory, or foreign country, such right of action may be enforced in this state. Every such action shall be commenced within the time prescribed for the commencement of such actions by the statute of such other state, territory, or foreign country.

The same remedy shall apply to any such cause of action now existing and to any such action commenced before January 1, 1932, or attempted to be commenced in proper time and now appearing on the files of any court within this state, and no prior law of this state shall prevent the maintenance thereof."

## STATEMENT OF THE CASE.

Respondent's decedent, 37 years of age, a husband and father of five children, was killed September 19, 1964, by the admitted negligence of Petitioner while it was operating one of its tractor trailer outfits.

The death occurred near Greenville, Illinois.

Petitioner's tractor trailer outfit originated in the State of Ohio and was on the home bound leg of a round trip.

Petitioner is and was a corporation authorized to do and doing business in the State of Ohio and having trucking terminals in three Ohio cities. Petitioner's rig was being operated by a resident of Ohio.

Respondent's decedent, an Ohio resident, was operating a tractor trailer outfit of Lee Way Motor Freight which company was authorized to do and was doing business in the State of Ohio with trucking terminals in Ohio. Respondent's decedent was on the out-bound leg of a round trip which commenced and was to end in Ohio.

Illinois' only connection was that the collision occurred in that state.

The issue presented the Supreme Court of Ohio was should Illinois law or Ohio law be followed as to damages. Illinois then had a limitation of $30,000.00 damages for wrongful death (since repealed) and Ohio by constitution had no limitation.

## ARGUMENT.

### I. THE DECISION BELOW IS CORRECT.

The Supreme Court of the State of Ohio determined that this conflict of law question should be resolved by the application of the Ohio rule as to damages as Ohio had the more substantial (and only) interest and contact with the litigation and parties. Illinois' interest in the controversy was non-existent except for being the fortuitous place of the collision in which respondent's decedent was killed.

Judges and Courts, who are the giants and leaders in making important and substantial contributions to the living law of this country, as well as the scholars, professors and legal writers in the area of conflicts of law have decided the same question presented the Ohio Supreme Court and by an overwhelming majority have concluded that the law to be applied is that of the State which has the most substantial governmental interest and the most significant relationship to the occurrence and the parties, just as was done by the Ohio Supreme Court.

Petitioner seeks the application of lex loci delicti to this fact situation without recognizing these salient facts (which were recognized by the Ohio Supreme Court), i.e. (1) Illinois had subsequently repealed its damage limitation, (2) the Petitioner admitted liability and thus Illinois' traffic laws were not in issue, (3) the only contact Illinois had in the case was in being the fortuitous place of the occurrence, (4) the Illinois Supreme Court itself has refused to apply lex loci delicti to a wrongful death action where Illinois citizens were killed in Iowa and the action was brought in Illinois, *Ingersoll vs. Klein* (1969), 106 Ill. App. 2d 330, 245 N.E.2d 288:

> "Illinois as both the forum state and the domicile of potential beneficiaries has a more significant interest in the recovery for wrongful death than does Iowa, whose only interest arises from the fortuitous occurrence of the accident in that state."

The Ohio Supreme Court decided this case on the facts which were peculiar to this one case in which Illinois was and is unconcerned, as stated by Mr. Justice Duncan in delivering the Court's opinion, 25 Ohio St. 2d 193 at page 198, to-wit:

> "All governmental interest in this case is Ohio's. Both the interest in fair and adequate compensation for the next of kin of an Ohio resident killed by a wrongdoer and the lawful administration of the decedent's estate are solely Ohio governmental interests. We fail to find any Illinois concern involved or disturbed.
>
> In this case, it may be stated that there is no true conflict of laws problem, or a false conflict, since Illinois has no interest in the litigation. . . .
>
> The proper law applicable for determining the measure of damages in the case at bar is Ohio law."

## II. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW.

A unanimous United States Supreme Court previously decided this issue on February 26, 1962 in the case of *Richards vs. United States,* 369 U.S. 1 (1961), and spoke through the opinion of Mr. Chief Justice Warren, to-wit (page 15):

> "Our view of a State's power to adopt an appropriate conflict of laws doctrine in a situation touching more than one place has been dictated by our discussion in Part III of this opinion. Where more than one State has sufficiently substantial contact with the activity in question, the forum State, by analysis of the interests possessed by the States involved, *could constitutionally apply to the decision of the case the law of one or another state having such an interest in the multistate activity.* Thus, an Oklahoma state court would be free to apply either its own law, the law of the place where the negligence occurred, or the law of Missouri, the law of the place where the injury occurred, to an action brought in its courts and involving this factual situation. Both the Federal District Court sitting in Oklahoma, and the Court of Appeals for the Tenth Circuit, *have interpreted the pertinent Oklahoma decisions,* which we have held are controlling to declare that an action for wrongful death is based on the statute of the place where the injury occurred that caused the death. Therefore, Missouri's statute controls the case at bar." (Emphasis ours.)

The later opinion clearly holds that a State is free to "*constitutionally*" apply either its own law, the law of the place of the negligence, or the other State's law. Thus, the issue Petitioner now presents has been passed upon and decided already by the United States Supreme Court. There is no reason for a change.

Petitioner's attempt to muddy the foregoing opinion is artful, but not credible, as Petitioner seeks to imply that when the court applied lex loci delicti, that such doctrine must always be applied, while the clear and stated fact is that the lower courts (Federal District and Court of Appeals Tenth Circuit) had interpreted the Oklahoma law to follow the doctrine lex loci delicti which in turn the federal court was required to follow, *Erie R. Co. vs. Tompkins,* 304 U.S. 64, but the State itself was still free to select the law to be applied.

Petitioner has cited *Hughes vs. Fetter* (1951), 341 U.S. 609, apparently without noting that the language of the opinion supports the decision of the Ohio Supreme Court in this instant case, to-wit:

> "We have recognized, however, that full faith and credit does *not* automatically compel a *forum* state to subordinate its *own statutory policy* to a conflicting public act of another state; rather it is for this Court to choose in each case between the competing public policies involved . . ." (Emphasis ours.)

The case of *First National Bank vs. United Airlines* (1952), 342 U.S. 396 cited by Petitioner is actually an identical case, with different states, but with the same result.

To accept this case on the merits this Supreme Court of the United States will have to say that it is no longer the law that a forum state has the right to choose in each case as between its public policy and that of a sister state.

Ohio accorded full faith and credit to the right of action created by the Illinois Statute for wrongful death; no more is required. Ohio found the Illinois monetary limitation of $30,000.00 repugnant to the clear mandate of the Ohio Constitution and Ohio Revised Code § 2125.01,

and additionally found the limitation repugnant to Ohio's public policy, and further repugnant to the facts in this case, and also repugnant to requirement that the court search and find a just result rather than adopt a "boiler plate rule" which offers only a "low yield of justice" and thus yields injustice. The case of *Richards vs. U. S., supra,* recognizes Ohio's right to make such findings and thus no federal constitutional question is presented by this case.

Precedent has a significance. *Not a single one* of more than a dozen States has found the issue herein presented to be a question of federal law; *not a single* federal court sitting in any of the States has found the decision it made (in applying the law of the forum in which it sat) applying the law of the forum and not the law of the State where the tort took place (lex loci delicti) to be a violation of the full faith and credit clause of the United States Constitution. (See footnote 2, page 12 Petitioner's Appendix.)

## CONCLUSION.

The Petition does not present a meritorious claim and should be denied.

Respectfully submitted,

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